all the terms of the agreement when the case came up before the court for an order of injunction in May 1967*. In answer to questions put to him by the court, however, he admitted that he knew at the time of the agreement that the defendant had a licence from the Forest Department to extract timber and that under the agreement the defendant was transferring to him his right to extract the timber. He said that he did not know who prepared the agreement. It is clear, however, on the face of the agreement that it was prepared by a petition writer in Gemas. It was he who lived in Gemas at the time and not the defendant. I must therefore reject the whole of his evidence as regards his being unaware of the terms of the agreement. To my mind he knew full well what the agreement was about and he signed it with his eyes open. I also cannot accept his evidence that he did not see the licence. Thus there is no question of the parties being not *in pari delicto*. He also cannot be heard to say that he was ignorant of the law (see *Archbolds (Freightage) Ltd.* v. *Spanglett, Ltd.*[2]).

In the case of *Sajan Singh* v. *Sardara Ali* [3] it was held by the Privy Council that although the transaction between the plaintiff and the defendant was illegal, nevertheless it was fully executed and carried out, and on that account it was effective to pass the property in the lorry to the plaintiff. Accordingly the plaintiff was held entitled to succeed in detinue. The plaintiff was also held entitled to have a clear claim in trespass as on the facts he was entitled to rely on his possession. In the present case the only property which can be said to have passed to the plaintiff under the illegal contract is the timber which he extracted from the forest. The defendant can no more recover the value of this timber than the plaintiff can recover damages from the defendant under the illegal contract. In other words, the loss must lie where it falls. The case of *Palaniappa Chettiar* v. *Arunasalam Chettiar* [4] does not help the plaintiff either. That was a case in which a father had transferred his land to his son for an illegal or fraudulent purpose and the court held that he was precluded from obtaining the aid of the court in order to get the land back on the ground that no court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act.

For the reasons I have stated, the plaintiff's action is dismissed with costs.

Action dismissed.

Solicitors: *D. A. Devadason; Kam Woon Wah & Co.*

* See [1967] 2 M.L.J. 148.

KOLANDAISAMY v. ANNAMALAI & THE HARBOUR TRADE UNION (SELANGOR) PORT SWETTENHAM

[O.C.J. (Gill J.) January 18, 1968]
[K.L. — Civil Suit No. 1652 of 1966]

Trade Union — "Dispute" between member and union — Union rule providing reference to arbitration — Whether court has jurisdiction to hear and adjudicate — Trade Unions Ordinance, 1959, ss. 38(1), 44 & 45.

Arbitration — Dispute between member and union — Rules providing for reference to arbitration — Whether court has jurisdiction to hear and adjudicate.

The plaintiff, claiming that he had been and was still a member of the union, sought in this action a declaration that the election of the members of the executive council of the union held on September 25, 1966 was null and void and an injunction to restrain the said executive council and every member thereof from acting in such capacity. On a preliminary point taken by the defendants the question the court had to decide was whether it had jurisdiction to hear and adjudicate upon the matter.

Held: (1) the crux of the matter in this case was whether there had been a dispute between a member of the union and the union. From the pleadings, the parties in the present case were in dispute;

(2) as the rules of the union provided that any dispute between a member and the union should be decided by reference to arbitration, the only way in which such dispute could come before the High Court was by way of a case stated for its opinion on any question of law as provided under section 45 of the Trade Unions Ordinance. Therefore in this case the court had no jurisdiction to hear and adjudicate.

Cases referred to:—

(1) *Palliser* v. *Dale & Ors.* [1897] 1 Q.B. 257.

(2) *Andrews* v. *Mitchell* [1905] A.C. 78.

(3) *Heard* v. *Pickthorne* [1913] 3 K.B. 299.

(4) *Winter* v. *Wilkinson* [1915] 1 Ch. 317.

(5) *McEllistrim* v. *Ballymacelligott Co-operative Agricultural & Dairy Society* [1919] A.C. 548.

(6) *The Municipal Permanent Investment Building Society* v. *Kent* (1884), 9 App. Cas. 260.

(7) *Norwich Corporation* v. *Norwich Electric Tramways Co. Ltd.* [1906] 2 K.B. 119.

CIVIL SUIT.

N. A. Majoribanks (*D. P. Xavier* with him) for the plaintiff.

V. K. Palasuntharam for the defendants.

Cur. Adv. Vult.

Gill J.: The plaintiff in this case claims that he has been and is still a member of the Port Swettenham Harbour Trade Union. He has brought this action for a declaration that the election of the members of the executive council of the union held on 25th September, 1966 is null and void and for an injunction to restrain the said executive council and every member thereof from acting in such capacity.

On a preliminary point taken by the defendants the question which I have to decide is whether this court has jurisdiction to hear and adjudicate upon this suit.

The basis of the action is that various irregularities both contrary to the rules of the union and to natural justice were committed in connection with the election of the executive council of the union. The irregularities alleged are that by a circular letter dated 11th August, 1966 the general secretary of the union made an appeal to the members that it was incumbent on them to elect an Indian as the president, that an election committee consisting of seven members conducted the election in serious breach of the rules of the union, that twelve persons were nominated as scrutineers contrary to rule 9(8) and rule 4 of the appendix to the rules of the union which stipulated the nomination of three scrutineers only, that the seven members of the election committee together with the twelve scrutineers did the counting of the ballot papers, that members of the union were taken to the union premises where the election committee distributed the ballot papers and persuaded them to vote for particular candidates and that in view of the matters aforesaid the procedural methods adopted in connection with the said election could not secure a free, fair and secret balloting.

Section 38(1) of the Trade Unions Ordinance, 1959 provides that the rules of every registered trade union shall make provision for all the matters specified in the first schedule to the Ordinance. Under paragraph 11 of the first schedule one of the matters for which provision must be made in the rules of every registered trade union is the manner in which disputes referred to in Part VI of the Ordinance shall be decided.

Section 44(1) of the Ordinance provides that every dispute between a member and the union or between any person aggrieved who has ceased to be a member of a trade union and the union shall be decided in the manner directed by the rules of the trade union, and that the decision so given shall be binding and conclusive on all parties; an application for the enforcement thereof may be made to the sessions court.

Under sub-section (2) of section 44 the parties in dispute in a registered trade union may, by consent (unless the rules of the union expressly forbid it), refer the dispute to the registrar. Sub-section (5) provides that where the rules of a trade union direct that disputes shall be referred to the courts, the dispute shall be determined by a sessions court. Sub-section (6) provides that where no decision is made on a dispute within forty days after application to the union for a reference under its rules, the member or person aggrieved may apply to the sessions court, and the sessions court may hear and determine the matter in dispute.

Rule 26 of the rules and constitution of the union in the present case provides that every dispute as stipulated in section 44(1) of the Ordinance shall be decided by reference to arbitration. Sub-rule (2) of rule 26 provides that a panel of not less than five arbitrators, none of whom being directly or indirectly interested in the funds of the union, shall be appointed as a permanent panel of arbitrators by an annual general meeting, and any vacancy or vacancies shall be filled at a subsequent general meeting. Sub-rule (3) provides that the complaining party to a dispute or a person appointed by him shall draw three names from the panel of arbitrators by lot in the usual manner and the three arbitrators whose names are first drawn shall decide the dispute. Sub-rule (4) provides that the expression "dispute" includes any dispute arising on the question whether a member or person aggrieved is entitled to be or continues to be a member or to be reinstated as a member but, save as aforesaid, in the case of a person who has ceased to be a member, does not include any dispute other than a dispute on a question between him and the union or an officer thereof, which arose whilst he was a member or arises out of his previous relation as a member of the union. This sub-rule is similar to the provisions of section 46 of the Ordinance. Sub-rule (5) of rule 26 provides that there shall be a right of appeal to the annual general meeting whose decision shall be binding and conclusive: provided always that in a dispute connected with (a) the election of officers of the union, or (b) the accounts and funds of the union, or (c) the non-compliance with any rule of the union, the parties to the dispute may, by consent, refer the dispute to the Registrar of Trade Unions.

Section 45 of the Ordinance provides as follows:—

> "Notwithstanding anything contained in the Arbitration Ordinance, 1950, or in any other written law, a sessions court and the registrar or any arbitrator or umpire to whom a dispute is referred under the rules of a registered trade union shall not be compelled to state a special case on any question of law arising in the case, but the court or registrar may, at the request of either party, state a case for the opinion of the High Court on any question of law, and may also grant to either party such discovery as to documents and otherwise, or such inspection of documents as might be granted by any court, and the discovery shall be made on behalf of the union by such officer thereof as the sessions court or the registrar may determine."

By reason of the provisions of the Ordinance to which I have referred and rule 26 of the rules and constitution of the union it has been contended on behalf of the defendants that this court has no jurisdiction. For the plaintiff it is contended that there is no dispute here and that what the plaintiff says is that there have been breaches of the rules of procedure as regards the election of office bearers. The first case cited in support of this proposition is the case of *Palliser* v. *Dale & Ors.*,[1] but it is conceded that the effect of that decision is nullified by section 46 of the Ordinance. The next case cited on behalf of the plaintiff is the case of

Andrews v. *Mitchell.*[2] That was a case in which a member of a friendly society was duly summoned before the arbitration committee for a breach of the rules, and was in his absence expelled from the society by a resolution of the committee upon a different charge, namely, of fraud and disgraceful conduct, of which no written notice had been given to him as required by the rules. It was held that the decision was null and void. Quite clearly that case can also have no application to the present case. The case of *Heard* v. *Pickthorne* [3] also has no application here because the resolution complained of by the plaintiff in that case was illegal and *ultra vires*. Again, *Winter* v. *Wilkinson* [4] does not help the plaintiff because there the defendants who were the trustees, secretary and treasurer of a lodge registered as a branch of the O. Friendly Society, had wrongfully divided the funds of the lodge between the members thereof in breach of the rules. In *McEllistrim* v. *Ballymacelligott Co-operative Agricultural and Dairy Society* [5] it was held that a dispute whether certain rules of the society were *ultra vires* was not a dispute between a society and its members within section 49 of the Industrial and Provident Societies Act, 1893, and that the action was therefore competent.

As was argued by counsel for the defendants, I think quite rightly, that the cases cited on behalf of the plaintiff refer to the supervisory jurisdiction of the High Court and not to its original jurisdiction. It requires no show of authority to say that where a statute confers powers on a particular body to decide certain matters and that body in making any decision goes outside its powers, then the High Court can set aside any decision of that body. In other words, there must be an error going to the jurisdiction of the body. The High Court in such a case does not itself make a decision but merely sets aside the decision of that body in the exercise of its supervisory jurisdiction.

The crux of the matter in this case is whether there has been a dispute between a member of the union and the the union. The word "dispute" is not defined in the Ordinance, although section 46 provides that the expression "dispute" shall include certain disputes. The word "dispute" therefore must be given its ordinary meaning. It is clear from the pleadings that the parties in the present case are in dispute.

As I have stated, the rules of the union made in strict accordance with the provisions of the Trade Unions Ordinance, 1959 provide that any dispute between a member and the union shall be decided by reference to arbitration with a right of appeal to the annual general meeting whose decision shall be binding and conclusive. The rules also provide that the parties may by consent refer to the Registrar of Trade Unions a dispute connected with any non-compliance with any rule of the union. Section 44(6) of the Ordinance provides that where the matter is one which, by the rules, should be referred to arbitration, and one party has not, within forty days, complied with the request to join in appointing arbitrators, or the arbitrators has not made an award, the sessions court may hear and decide the dispute. That seems to me equivalent to an enactment that no other court shall, in such a case, do so (see *The Municipal Permanent Investment Building Society* v. *Kent* [6] and *Norwich Corporation* v. *Norwich Electric Tramways Co., Ltd.*[7]). The only way in which any such dispute can come before the High Court is by way of a case stated for its opinion on any question of law as provided under section 45 of the Ordinance. In the result I must hold that this court has no jurisdiction to hear and adjudicate upon this action. The action will therefore be dismissed with costs.

Action dismissed.

Solicitors: *Xavier & Thambiah; V. K. Palasuntharam.*

LOPEZ v. VALLIAPPA CHETTIAR

[P.C. (Viscount Dilhorne, Lord Hodson, Lord Upjohn, Lord Pearson & Sir Frederic Sellers) January 24, 1968]

Practice and Procedure — Appeal — Federal Court — Circumstances when appeal from it to the Privy Council is as of right — Exercise of discretion only in certain cases — Courts of Judicature Act, 1964, s. 74.

Privy Council — Appeal — Discretion in granting of special leave.

The petitioner had instituted proceedings in the High Court for the specific performance of an oral agreement for the sale of land. The only issue before the trial judge was a pure question of fact. The action was dismissed by the High Court and on appeal, the High Court's findings were affirmed by the Federal Court. The petitioner then applied to the Federal Court for conditional leave to appeal to the Privy Council. The petitioner's application was unanimously dismissed and on December 9, 1967 Ong Hock Thye F.J. gave his reasons for doing so. He clearly thought that the Federal Court had discretion to refuse leave to appeal and that the appeal did not lie as of right. He said that it would not be right to put the respondent to further heavy expense and inconvenience by giving leave as the appeal appeared to receive short shrift in the Privy Council. On an application to the Privy Council for special leave to appeal:—

Held, refusing the application: (1) where an application is made to the Federal Court for leave to appeal to the Privy Council and the matter comes within section 74(1)(a)(i) or (ii) of the Courts of Judicature Act, 1964, an appeal lies as of right and the Federal Court does not have discretion to refuse leave to appeal. The Federal Court only has discretion to refuse leave in cases which come within section 74(1)(a)(iii) and 74(1)(b);

(2) the granting of special leave to appeal by the Judicial Committee is a matter of discretion and not of right. The application for special leave was refused on